

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)	
)	
Amendment of Section 73.622(b),)	MM Docket No. 01-244 ✓
Table of Allotments,)	KM-10234
Digital Television Broadcast Stations.)	
(Tyler, Texas))	
 In the Matter of)	
)	
Amendment of Section 73.622(b),)	MM Docket No. 01-245
Table of Allotments,)	RM-10235
Digital Television Broadcast Stations.)	
(Lufkin, Texas))	

ORDER DENYING PETITION FOR STAY

Adopted: December 13, 2002

Released: December 20, 2002

By the Chief, Video Division:

1. The Commission has before it a petition for stay filed by the International Broadcasting Network ("IBN"), licensee of low power stations KLGW-LP, Longview, Texas, and KIBN-LP, Lufkin, Texas, directed to the *Report and Order* in these proceedings, 17 FCC Rcd 19452 (2002). The *Report and Order* granted two separate requests of Civic License Holding Company, Inc., licensee of station KLTV(TV), Tyler, Texas, and station KTRE(TV), Lufkin, Texas. The *Report and Order* amended the DTV Table of Allotments. Section 73.622(b) of the Commission's Rules, by substituting DTV channel 10 for DTV channel 38 at Tyler, and DTV channel 11 for DTV channel 43 at Lufkin. IBN filed a petition for reconsideration of the *Report and Order* and requests a stay of the effective date of the Commission's action pending disposition of IBN's petition for reconsideration.

2. In its petition for stay, IBN asserts that the Commission's decision was based on incorrect information and that the adoption of Civic's channel substitutions was arbitrary and capricious. IBN claims that the use of DTV channel 10 and DTV channel 11 at Tyler and Lufkin, respectively, will cause irreparable harm to IBN's low power television stations. IBN claims that unless the Commission stays its action in these proceedings, IBN will lose the use of its current low power television channels.

DISCUSSION

3. To warrant a stay of an administrative action, a party must make a convincing showing that: (1) it is likely to prevail on the merits of its appeal; (2) it will suffer irreparable harm if a stay is not granted; (3) a stay would not harm other interested parties; and (4) a stay would serve the public interest.¹

4. After careful consideration of this matter, we conclude that IBN has not *met* these criteria. First, we continue to believe that our action of substituting DTV channels 10 and 11 at Tyler and Lufkin was a reasonable determination based on the record before us. The adoption of Civic's channel substitution proposals will help to facilitate the implementation of DTV service to the communities of Tyler and Lufkin by enabling Civic to construct its DTV facilities on existing towers. Thus, we do not believe that IBN has demonstrated a likelihood of prevailing on the merits. Second, while IBN claims irreparable harm if the requested stay is not granted, IBN's low power television stations are not entitled to protection from DTV facilities. The Commission has repeatedly reaffirmed that the low power television service is a "secondary spectrum priority" service and must not cause interference to existing or new full-service stations.² Moreover, IBN may immediately file displacement applications for new channels pursuant to Section 73.3572 of the Commission's Rules. Issuance of a stay would harm Civic and the public by delaying the construction of DTV facilities in Tyler and Lufkin.

5. Accordingly, IT IS ORDERED, That the aforementioned petition for stay IS DENTED.

6. For further information concerning this proceeding, contact Pam Blumenthal, Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹ *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921 (D.C. Cir. 1958), see also *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977).

² See e.g., *Report and Order in the Establishment of a Class A Television Service*, 15 FCC Rcd 6355 (2000).